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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,480	02/27/2002	Kenneth Largman	A-70543-3/RMA/LM/KRG	5067

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EXAMINER

MCCARTHY, CHRISTOPHER S

ART UNIT PAPER NUMBER

2113

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,480

Applicant(s)

LARGMAN ET AL

Examiner

Christopher S. McCarthy

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 2-14, 16-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the physical structure of drives and the physical switch must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Content of Specification

(a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.

(b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.

(c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.

(d) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.

(e) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

(1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the

applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

- (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (f) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (g) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (j) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a

separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

- (k) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-14 and 16-19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goshey et al. U.S. Patent 6,205,527.

As per claim 2, Goshey teaches a method for a computer repairing itself to an operational status at any time during operation, the method comprising the computer-executed steps of: booting from a first hard disk drive boot device disposed within a main computer hardware box of the computer (column 4, line 67 – column 5, line 5); then, in response to receiving a signal indicating a need for repair of the computer during the booting or during any operating state, booting from a second hard disk drive boot device; the second hard disk drive boot device being physically present within the main computer hardware box of the computer prior to receiving the

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signal indicating a need for repair (column 5, lines 8-13; column 2, lines 59-63); and then repairing software on the first hard disk drive boot device while booted from the second hard disk drive boot device and selectively either: (i) maintaining operation of the computer from the second boot device to restore operational status of the computer during repairing of the software on the first hard disk device, or (ii) changing to operation of the computer from the second boot device to the first boot device to restore operational status of the computer (column 2, lines 61-65), wherein the signal is generated by a user altering the state of a physical switch different from an on-off switch of the computer (column 24, line 6). However, Goshey does not specifically disclose wherein the switch is exposed on an exterior surface of the main computer hardware box of the computer. "Official Notice" is taken that Goshey does teach wherein that his invention can be on any type of computer device (column 26, lines 50-54). It is well known in the art that a portable computer, e.g. laptop computer, has the keyboard exposed upon the exterior surface of the hardware computer component. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a portable computer with an exterior surface keyboard in the invention of Goshey. One of ordinary skill in the art would have been motivated to use a portable computer with an external surface keyboard in the invention of Goshey because a portable computer, such as a laptop computer, would fully encompass the inventive concept of Goshey of being utilized in any type of computer and would further utilize using the external surface keyboard for re-booting the system using the appropriate keys, as desired by Goshey.

As per claim 3, Goshey teaches the method of claim 2, wherein the step of repairing software comprises: automatically repairing software on the first boot device (column 16, lines 27-48).

As per claim 4, Goshey teaches the method of claim 3, wherein the step of automatically repairing software comprises: automatically repairing software on the first boot device without further direction from the user (column 16, lines 27-48).

As per claim 5, Goshey teaches the method of claim 3, wherein the step of automatically repairing software comprises: repairing software on the first boot device according to preset preferences (column 16, lines 27-48).

As per claim 6, Goshey teaches the method of claim 5, wherein the repairing according to preset preferences comprises: repairing according to whether to recover data; to run a virus check; to reformat the first boot device; to revert to a backup; or to run diagnostics (column 16, lines 38-43, 54-57, 62-66).

As per claim 7, Goshey teaches the method of claim 2, wherein the step of repairing software comprises: reformatting the first boot device (column 16, lines 55-57); and then copying software onto the first boot device (column 13, lines 33-43).

As per claim 8, Goshey teaches the method of claim 2, wherein the step of repairing software comprises: resetting parameters in a persistent memory; and then copying software onto the first boot device (column 13, lines 33-45).

As per claim 9, Goshey teaches the method of claim 2, further comprising the step of: directing a user to re-boot from the first boot device (column 13, lines 42-45).

As per claim 10, Goshey teaches the method of claim 2, wherein before the step of booting from the second boot device, the following step is performed: installing software onto the second boot device (column 10, lines 52-58; column 11, lines 5-51).

As per claim 11, Goshey teaches the method of claim 10, wherein the step of installing software onto the second boot device comprises one method from the following set of methods: a) installing software onto the second boot device; b. copying installed software onto the second boot device; c) copying installation software onto the second boot device; and d) writing onto the second boot device a version of an operating environment running as a result of the boot from the first boot device (column 10, lines 52-58; column 11, lines 5-51).

As per claim 12, Goshey teaches the method of claim 10, wherein the step of installing software onto the second boot device comprises one method from the following set of methods: a) installing software onto the second boot device; b. copying installed software onto the second boot device; c) copying installation software onto the second boot device; and d) writing onto the second boot device a version of an operating environment running as a result of the boot from the first boot device (column 10, lines 52-58; column 11, lines 5-51).

As per claim 13, Goshey teaches the method of claim 10, wherein after the step of installing and before the step of booting from the second boot device, the following step is performed: updating the software installed onto the second boot device (column 12, lines 14-40).

As per claim 14, Goshey teaches the method of claim 10, wherein after the step of installing and before the step of booting from the second boot device, the following step is performed: protecting the second boot device from further modification (column 12, lines 33-36).

As per claim 16, Goshey teaches the method of claim 2, wherein before the step of repairing software the following step is performed: offering a user a choice of thoroughness of repair (column 9, lines 31-46).

As per claim 17, Goshey teaches the method of claim 2, wherein before the step of booting from the second boot device, the following step is performed: automatically monitoring an operating environment running as a result of the booting from the first boot device (column 10, lines 12-23).

As per claim 18, Goshey teaches the method of claim 17, further comprising the step of detecting an undesirable change in the operating environment; and generating the signal indicating a need for repair in response to the detection (column 10, lines 12-23).

As per claim 19, Goshey teaches the method of claim 2, wherein before the step of booting from the second boot device, the following step is performed: automatically searching for boot devices (column 9, lines 54-65).

As per claim 21, Goshey teaches a computer system comprising: one or more peripheral devices including a means for communication, an coupling member, and a capability for emitting light; a receptacle mechanically coupled with said computer system for engaging said coupling member of said peripheral device; and a port for communicatively coupling said computer system and said peripheral devices coupled with receptacle (column 6, line 61 – column 7, line 10).

Allowable Subject Matter

5. Claim 20 is allowed.

6. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowance

7. The following is an examiner's statement of reasons for allowance: When read as a whole, claim 20 is allowable with respect to the following limitation: offering a user a choice of thoroughness of repair selected from the set of repairs consisting of a quick repair that re-installs or copies template software without first re-formatting, a better repair that performs a high-level re-format before that copy or re-installation of software, and a best repair that performs a low-level re-format before copying over or re-installing software

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Double Patenting

8. Claim 12 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 11. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim

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to object to the other as being a substantial duplicate of the allowed claim. See MPEP

§ 706.03(k).

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 2-5, 7-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-4 of copending Application No. 10/094,600. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

Claim 2, 3, and 4 of the copending application includes all of the limitations in claims 2-5, 7-8 of the instant application. With regard to the additional limitations in claim 2 of the copending application consisting of the copying and repairing of software, which are not included in claim 2 of the instant application, the omission of these limitations in claim 2 of the instant application is an obvious expedient since the remaining limitations of claim 2-4 of the copending application perform the same function as the limitations in claim 2-5, 7-8 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. McCarthy whose telephone number is (703)305-7599. The examiner can normally be reached on M-F, 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (703)305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

csm
August 11, 2004


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